

**H & H Forms, Inc. and Laborers' International
Union of North America, Local 675, AFL-CIO.
Case 34-CA-5695**

September 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by Laborers' International Union of North America, Local 675, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint against H & H Forms, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint,¹ the Respondent has failed to file an answer.

On August 13, 1992, the General Counsel filed a Motion for Summary Judgment. On August 14, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated July 27, 1992, notified the Respondent that unless an answer was received by August 10, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

¹ The copy of the complaint that was sent to the Respondent by certified mail was returned to the Regional Office marked "unclaimed." However, the Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Moreover, an additional copy of the complaint was served on the Respondent by leaving it at the personal residence of its president.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Massachusetts corporation, with an office and place of business in Swampscott, Massachusetts, has been engaged as a contractor in the building and construction industry. During the 12-month period ending May 31, 1992, the Respondent performed services valued in excess of \$50,000 in States other than the Commonwealth of Massachusetts. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All laborers employed by the Respondent; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

About April 19, 1991, the Respondent entered into an "Acceptance of Agreements" whereby it accepted and approved the collective-bargaining agreement between the Union and the Labor Relations Division of the Associated General Contractors of Connecticut, Inc. (the AGC agreement) and the collective-bargaining agreement between the Union and the Connecticut Construction Industries Association, Inc. (the CCIA agreement) both effective April 1, 1991, through March 31, 1993, and agreed to be bound to such future agreements unless timely notice was given.

About April 19, 1991, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the representative of its employees in the above bargaining unit and since that date the Union has been recognized as such representative by the Respondent without regard to whether the majority status of the Union had ever been established under the provisions of Section 9 of the Act. Accordingly, at all times material, the Union has been the limited exclusive collective-bargaining representative of the employees in the unit.

About January 1, 1992, the Respondent unilaterally and without the consent of the Union failed to continue in full force and effect all the terms and conditions of the AGC agreement and the CCIA agreement by failing to make the contractually required contributions to the health and welfare fund, the pension fund, the training fund, the legal services fund, and the annuity fund. About April 10, 1992, the Respondent unilaterally and without the consent of the Union failed

to pay unit employees for all hours worked. These subjects relate to wages, hours, and other terms and conditions of employment of the unit employees and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in these unilateral actions without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSION OF LAW

By its failure on and after January 1, 1992, to continue in full force and effect all the terms and conditions of the AGC and CCIA agreements by making contractually required contributions to the Connecticut Laborers' Health and Welfare Fund, the pension fund, the training fund, the legal services fund and the annuity fund, and its failure on and after April 10, 1992, to pay unit employees for all hours worked, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required payments for pension, health and welfare, training, legal services and annuity funds, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any losses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, we shall order the Respondent to make the unit employees whole for its failure to pay employees for all hours worked as set forth in *Kraft Plumbing & Heating*, supra, and *Ogle Protection Service*, supra, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, H & H Forms, Inc., Swampscott, Massachusetts, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to honor the terms of its AGC and CCIA agreements by failing to make contractually required fringe benefit payments and failing to pay unit employees for all hours worked.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole unit employees for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make contractually required fringe benefit contributions and failure to pay unit employees for all hours worked as described in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Swampscott, Massachusetts, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this Notice.

WE WILL NOT refuse to bargain with the Laborers' International Union of North America, Local 675, AFL-CIO, as the limited exclusive bargaining representative of our employees in the following appropriate unit:

All laborers; but excluding all other employees, and all guards, professional employees and supervisors as defined in the Act.

WE WILL NOT fail or refuse to honor all the terms of our AGC and CCIA agreements by failing to make contractually required fringe benefit payments and failing to pay unit employees for all hours worked.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor all the terms and conditions of our AGC and CCIA agreements by making all contractually required fringe benefit contributions and paying unit employees for all hours worked.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make all contractually required fringe benefit contributions and failure to pay unit employees for all hours worked.

H & H FORMS, INC.